IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 30 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF WEALTH TAX

Versus

SUHASBHAI V MEHTA

Appearance:

1. WEALTH TAX REFERENCE No. 30 of 1987

MR BB NAIK for MR MANISH R BHATT for Petitioner No. 1

MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 10/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, following questions are referred for our opinion in respect of assessment year 1974-75:-

(i) Whether, on the facts and in the circumstances of the case, reversionary interest in Suhasbhai Vadilal Family Trust No.1 was rightly brought to Wealth-tax by the Wealth-tax Officer in assessment years 1968-69 to 1973-74 ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that there was no reversionary interest of the assessee in the said Suhasbhai Vadilal Family Trust No.1 for the years under reference ?

(iii) Whether, the finding of the Tribunal in deleting the additions in respect of reversionary interest of the assessment in Suhasbhai Vadilal Family Trust No.1 for the years under reference is correct in law in view of the provisions under the Deed of Settlement dated 16-3-1959 ?

(iv) Whether, shares of private limited companies should be valued on the basis of Rule 1D of the Wealth-tax Rules, 1957 as interpreted by the Gujarat High Court in the case of Ashok K. Parikh 129 ITR 46 for assessment years under reference ?

2. We have heard Mr. B.B. Naik learned counsel for the revenue and Mr. J.P. Shah learned counsel for the respondent-assessee.

3. As regards questions No.1, 2 and 3, our attention is invited to the decision dated 9-6-1993 of this Court in Wealth Tax Reference No.29, 29A and 29B of 1980 in the case of the same assessee. The same questions were referred to this Court in the above matter and after hearing the learned counsel for the parties, this Court answered all the three questions in favour of the assessee.

Following the aforesaid decision, we answer questions No.1, 2 and 3 in the affirmative i.e. in favour of the assessee and against the revenue.

4. Coming to question No.4, the decision of the Tribunal is based on the decision of this Court in the case of Ashok K. Parikh 129 ITR 46. The principle laid

down by this Court in the aforesaid case of Ashok K. Parikh (supra) came up for consideration before the Apex Court in Bharat Hari Singhania vs. CWT (1994) 207 ITR 1. The Apex Court laid down the following principle in Singhania's case and thus impliedly overruled the decision of this Court in Ashok K. Parikh (supra).

> "If in the case of the balance-sheet of the company the amount of tax paid, which is shown as an asset and has to be deducted from the value of the assets as required by clause (1)(a) of Explanation II to rule 1 D, is also shown as a liability i.e. if that amount is included in the amount set apart as provision towards taxation, it would obviously have to be deleted from the column of liabilities- and this is also what clause (ii)(e) says. Clause (ii)(e) is in a sense complementary to clause (i)(a). The advance tax paid is not really an asset but the pro forma of balance-sheet in Schedule IV to the Companies Act requires it to be shown as such. What clause (i)(a) does is to remove the said amount from the list of assets for the purpose of rule 1D. It is then that clause (ii)(e), which speaks of liabilities, says that only that amount which is still remaining to be paid shall be treated as a liability on the valuation date. If in the provision for taxation made in the column of liabilities in the balance-sheet, the amount of advance tax already paid is again shown as a liability, it will not be treated as a liability. This is the true function of both the subclauses.

Following the aforesaid decision, our answer to question No.4 is that the shares of private limited company should be valued on the basis of Rule 1D of the Wealth-tax Rules, 1957 as interpreted by the Hon'ble Supreme Court in Bharat Hari Singhania vs. CWT 207 ITR 1.

5. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

zgs/-